

**§ 682. Capital requirements****(a) Amount****(1) In general**

Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this chapter.

**(2) Exception**

The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

**(3) Adequacy**

In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able<sup>1</sup> both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

**(4) Exemption from capital requirements**

The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 681 of this title before September 30, 1996, that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after September 30, 1996, will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

**(b) Financial institution investments****(1) Certain banks**

Notwithstanding the provisions of section 1845(a)(1)<sup>2</sup> of title 12, any national bank, or

any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

**(2) Certain savings associations**

Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

**(c) Diversification of ownership**

The Administrator shall ensure that the management of each licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

(Pub. L. 85-699, title III, §302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86-502, §5, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, §3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, §2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §§203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94-305, title I, §§106(e), 107, June 4, 1976, 90 Stat. 666; Pub. L. 95-89, title II, §210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-507, title I, §105, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 102-366, title IV, §§406(a), 409, Sept. 4, 1992, 106 Stat. 1015, 1017; Pub. L. 104-208, div. D, title II, §208(c), Sept. 30, 1996, 110 Stat. 3009-742; Pub. L. 105-135, title II, §215(a), Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106-554, §1(a)(9) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A-690.)

## REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1)(B), see References in Text note set out under section 661 of this title.

Subsection (d) of section 681 of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

Section 1845(a)(1) of title 12, referred to in subsec. (b)(1), was repealed by Pub. L. 89-485, §9, July 1, 1966, 80 Stat. 240. See section 371c of Title 12, Banks and Banking.

## CODIFICATION

September 30, 1996, referred to in subsecs. (a)(4) and (c), was in the original "the date of enactment of the Small Business Program Improvement Act of 1996", which was translated as meaning the date of enactment of the Small Business Programs Improvement Act of 1996, to reflect the probable intent of Congress.

## AMENDMENTS

2000—Subsec. (b). Pub. L. 106-554 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Subsec. (b). Pub. L. 105-135 substituted "any national bank, or any member bank of the Federal Re-

<sup>1</sup> So in original. Probably should be followed by a comma.

<sup>2</sup> See References in Text note below.

serve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank." for "shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus."

1996—Subsec. (a). Pub. L. 104-208, §208(c)(1), inserted heading and substituted pars. (1) to (3)(A) and "determine that the licensee will be able" in par. (3)(B) for "The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than \$150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company."

Subsec. (a)(4). Pub. L. 104-208, §208(c)(2), added par. (4).

Subsec. (c). Pub. L. 104-208, §208(c)(3), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration."

1992—Subsec. (a). Pub. L. 102-366 substituted "1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000" for "1979 pursuant to section 681(c) and (d) of this title shall be not less than \$500,000" and inserted at end "The Administration shall also determine the ability of the company, both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources."

1978—Subsec. (a). Pub. L. 95-507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than \$500,000.

1977—Subsec. (b). Pub. L. 95-89 inserted "and" between "capital" and "surplus".

1976—Subsec. (a). Pub. L. 94-305, §106(e), struck out "of incorporation" after "its articles".

Subsec. (b). Pub. L. 94-305, §107, struck out provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90-104, §203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of \$150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accord-

ance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least \$300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of \$700,000 or the amount of paid-in capital and surplus of the company from other sources and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90-104, §204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88-273 increased the limitation on Administration purchase of debentures from \$400,000 to \$700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87-341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88-273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87-341, §3(a), inserted "and growth", limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchasable debentures to not more than the lesser of \$400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company's license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to \$150,000.

Subsec. (b). Pub. L. 87-341, §3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86-502 substituted "Notwithstanding the provisions of section 1845(a)(1) of title 12, shares" for "Shares".

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

#### EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

### § 683. Borrowing operations

#### (a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and